Intercarrier Compensation Reform Principles
Wireless Termination Tariffs
Rating & Routing Points

CTIA – The Wireless Association ™
Presentation to
Commissioner Jonathan Adelstein
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OVERVIEW

- The focus of intercarrier compensation reform must be maximizing benefits for consumers.
- The wireless petitions challenge LEC practices that encourage and reward inefficiency, discriminate against wireless carriers, and, most importantly, harm consumers. The challenged LEC practices disproportionately impact consumers in rural areas.

CTIA INTERCARRIER COMPENSATION REFORM PRINCIPLES

- Rules should focus on benefits to consumers and should not guarantee that reforms would be revenue neutral for any class of carrier.
- Rules should encourage economic efficiency and promote competition.
- Rules should be technology neutral and should not confer a competitive advantage on one category of carrier or service provider over another.
- Each carrier should be responsible for recovering its network costs from its own end-user customers and, in a competitive market, should have flexibility in how those costs are recovered.
- Universal service support should be targeted, and no higher than necessary to ensure affordable end-user rates.
- Rules should be as simple as possible to administer.

THE INTERCARRIER COMPENSATION REGIME IMPACTS THE COMPETITIVE MARKET

- Intercarrier compensation is a major cost for the wireless industry.
  - In 2003, the CMRS industry was a net payer of $3 to $4 billion in intercarrier compensation charges. The CMRS industry also is a significant net payer into the universal service mechanisms.
- These are not only unnecessarily large “out of pocket” costs, but they impact the ability of wireless carriers to serve customers on an even footing with wireline carriers – particularly in rural areas.

WIRELESS PETITIONS

- T-Mobile/ Nextel/Western Wireless petition, filed September 6, 2002, requests the FCC to uphold the statute and FCC rules and clarify that unilateral and extortionate ILEC tariffs for the termination of local traffic from wireless carriers are unlawful.

- Sprint petition, filed May 9, 2002, seeks clarification that wireless carriers can designate separate rating and routing points for the exchange of local traffic under existing rules and that ILECs must honor such designations.

THE WIRELESS PETITIONS SHOULD BE RESOLVED WITHOUT FURTHER DELAY

- As long as the wireless termination tariffs remain in effect and ILECs refuse to load wireless customer numbers into their networks, wireless consumers will be harmed and competition distorted.

- The petitions merely seek declaratory relief under current rules. The near term resolution of the petitions will not alter the governing rules or prejudge the Intercarrier Compensation reform proceeding.

- Grant of these petitions will ensure that incumbent LECs and wireless carriers have the same incentives to negotiate compensation and other interconnection terms. The resulting stability will facilitate intercarrier compensation reform.

- Allowing these ILEC practices to continue would be a huge step back in reforming the intercarrier compensation regime. The more ILECs are allowed to file uneconomically high tariffs, the harder it will be to implement fundamental reform.

T-MOBILE/NEXTEL/WESTERN WIRELESS WIRELESS TERMINATION TARIFF PETITION

- Wireless carriers will be less able to deploy services and facilities to serve rural consumers if they are forced into inefficient interconnection arrangements.

- Wireless termination tariffs could cost the wireless industry and its consumers between $10 and $40 billion per year.

- Failure to act will lead to service interruptions and impede market entry.

  - As a result of unlawful Missouri Court of Appeals decision upholding validity of LEC wireless termination tariffs, SBC notified T-Mobile of its intent to block wireless calls if T-Mobile refuses to pay one-way termination charges pursuant to tariff.

  - LECs have filed wireless termination tariffs in at least 20 states, and formal state commission proceedings (*e.g.*, petitions, arbitrations, tariff investigations) are ongoing in more than 13 states.

UNILATERAL TARIFFS BYPASS FEDERAL INTERCONNECTION PROCESS

- Congress established detailed process involving negotiation/arbitration, state commission approval, FCC oversight, and federal judicial review. This process is "central" to 1996 Telecom Act and "not to be evaded by state rule-making."
- Tariffs thwart federal process by (1) removing incentives for rural LECs to negotiate in good faith and (2) permitting multiple state proceedings not subject to federal review.
- Under federal process, both rural LECs and wireless carriers have mutual incentives and obligations to negotiate for interconnection. Tariffs remove rural LEC incentives to negotiate in good faith and grant an unfair competitive advantage to rural LECs in the negotiation process.

FEDERAL LAW AND POLICY PROHIBIT UNILATERAL INTERCONNECTION TARIFFS

- Sec. 332(c)(1)(B) gives FCC, not states, authority over CMRS-LEC interconnection, and Sec. 2(b) precludes state regulation of entry of and rates charged by CMRS carriers. *See Iowa Utilities Bd.*, 120 F.3d 753, 800 n.21(8th Cir. 1997) (upholding FCC's CMRS-LEC interconnection rules).

- Every federal appellate court addressing the issue has preempted tariffs filed in lieu of an interconnection agreement.

- Prior to 1996 Telecom Act, FCC found that ILEC interconnection obligations under Secs. 201 and 332(c) preclude ILECs from adopting unilateral tariffs before negotiating interconnection agreements with wireless carriers.

- Since 1996, FCC consistently has refused to allow ILECs to impose unilateral tariffs in lieu of interconnection agreements.

RURAL LECs HAVE ALTERNATIVE OPTIONS FOR SEEKING TERMINATION COMPENSATION

- Rural LECs have legally enforceable right to demand good faith negotiations and a remedy if wireless carriers fail to comply.

- Under Sec. 20.11(b)(2) of FCC rules, wireless carriers are under mutual and reciprocal obligation to pay "reasonable compensation" to rural LECs for traffic termination.

- In adopting LEC-wireless interconnection rules, FCC "allowed LECs to negotiate the terms and conditions of interconnection with cellular carriers" and "required these negotiations to be conducted in good faith." *Second CMRS Report and Order*, 9 FCC Rcd 1411, ¶ 229 (1994).

- Rural LECs that cannot reach agreement with wireless carriers may file complaint under Sec. 208 of the Act.

SPRINT RATING AND ROUTING PETITION

- The Telecommunications Act, the FCC's Rules, and two decades of industry practice recognize that having separate rating and routing points often is the most economically efficient alternative for both competitors and incumbents.
- CMRS carriers have interconnected indirectly with RLECs since the inception of cellular industry 20+ years ago, using Type 2A interconnection at LATA tandem switches, thereby obtaining indirect connection to all switches/networks subtending the tandem, including RLEC networks.
- Since the inception of cellular industry, CMRS carriers have obtained telephone numbers in the locations where mobile customers primarily use their handset.
    - Under FCC's numbering rules, CMRS carriers can obtain numbers rated in any LEC rate center where they provide service.
    - Thus, rating point is generally different from routing point.
    - Industry guidelines recognize that rating and routing points can be different.

SPRINT RATING AND ROUTING PETITION

- Section 251(a) explicitly provides that CMRS carriers and RLECs can connect "directly or indirectly."
  - FCC has held, *e.g.*, *Virginia Arbitration Order*, that the competitive carrier, not the ILEC, may decide whether to interconnect directly or indirectly.
  - FCC Rule 20.11(a) states that LECs "must provide the type of interconnection reasonably requested by a mobile service licensee" and further confirms that CMRS can interconnect indirectly.
- The NTCA has recognized that the "most feasible and cost-effective option for most rural ILECs is to use the RBOC's tandem for transiting functions."
  - Because RLECs already have large trunk groups connecting their networks to the LATA tandems, the incremental RLEC cost to transport a call to a CMRS is minuscule.
  - Both CMRS and RLECs would face increased costs with a direct connection because of low traffic volumes and other factors.